THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

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Justice Earl Warren on Israel

. . . The Founding Fathers were conscious of their debt to the Hebrew tradition as the parent source of their own ideals. They drew strength and consolation from the saga of Israel's birth. It was characteristic of Benjamin Franklin to suggest that the Seal of the new Union should portray the people of Israel fleeing across the parted waters of the Red Sea on their way to a new life of independence. . . .

. . . It is natural that Americans should think of the land of Israel as the source of our law and ethics. When the restoration of Israel as a nation became an active international policy in the sequel to the First World War, the United States inevitably became associated with it. Ten years ago the United States joined in the action of the United Nations to bring Israel's rebirth to its recognized consummation. Today Israel is firmly established in the life and law of nations. . . .

. . . At the threshold of her second decade Israel still faces many obstacles and dangers. Many of these she faces in common with the rest of us. But amidst her political and economic anxieties she will doubtless recall the undying ideas which she has carried across history from her first redemption four thousand years ago to her recent liberation. These ideas are not obsolete or outworn. Science has brought mankind to a crossroads from which the paths fork outwards to vast alternatives of salvation or disaster. The forces newly revealed by nature must be subdued by the human impulses which are the better part of man's spiritual legacy. Only the humanities can solve the problems which the physical sciences have created. . . .

. . . Almost two thousand years ago the Roman emperor Titus captured and destroyed Jerusalem. Since then, for 60 generations, they have kept alive in their hearts the love of freedom and the will to achieve it. Belatedly it has come to them. They will not trifle with it because no freedom is sweeter than that which was once lost and then regained through long struggle, suffering and prayer. We rejoice with them. . . .

Chief Justice EARL WARREN,
United States Supreme Court

From an address on April 24, 1958, at Independence Hall, Philadelphia, Pa.

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IN THIS ISSUE

Alec E. Weinrob Elected Decalogue President. Installation on June 20 at the Covenant Club

At the 1958 Decalogue annual meeting and election of officers held on May 28 at the Chicago Bar Association quarters, Alec E. Weinrob was elected head of our Society.

President Solomon Jesmer presided at the meeting and read a report of his stewardship in office. Intra-Society awards of merit were bestowed on members Favil D. Berns and Meyer Weinberg. Past president of our Society Elmer Gertz, recently attorney for Nathan Leopold in his fight for freedom, spoke on "Some Views of Crimes and Punishment." Member Morton Barnard presented a musical program.

Other officers elected were:

1st Vice President	Meyer Weinberg
2nd Vice President	L. Louis Karton
Treasurer	Harry H. Malkin
Financial Secretary	Judge Irving Landesman
Executive Secretary	Michael Levin

Members of the Board of Managers elected for a two year term were Zeamore A. Ader, Favil D. Berns, Eugene Bernstein, Matilda Fenberg, Reginald J. Holzer, Esther O. Kegan, Leon A. Kovin, Louis J. Nurenberg, Richard L. Ritman, H. Burton Schatz and Marvin M. Victor.

The following amendments to our Society's constitution were unanimously adopted:

1. All provisions of this Constitution, as amended, pertaining to allocations to the Library Fund and the Foundation Fund are hereby repealed.
2. The Board of Managers may from time to time make allocations to either or both the Foundation Fund and the Decalogue Foundation, Inc. from the funds of the Society.
3. All applications shall be acted upon by the Board of Managers. No action shall be taken thereon until at least ten days' notice of the application has been given to all members of the Board of Managers by mail. Objections to applications for membership shall be determined in such manner as the Board of Managers may prescribe. All applicants approved by the Board of Managers shall be enrolled as members.

Ceremonies of installation of officers and members of the Board will be held at a luncheon on June 20 in the Covenant Club ballroom. Judge Abraham L. Marovitz of the Superior Court, Cook County, will be the installing officer.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 179 West Washington Street, Chicago 2, Illinois.

Hebrew University Law School Publishes Society Sponsored Volume

The Decalogue Society of Lawyers is the recipient of a tribute in the pages of the recently published book *THE MYTH OF INTERNATIONAL SECURITY*, a Juridical and Critical Analysis, by Professor A. V. Levontin, a member of the Law Faculty of The Hebrew University, Jerusalem.

The reference reads:

> A grant-in-aid toward publication was made by The Decalogue Society of Lawyers, Chicago.

The Decalogue Society, it will be recalled, raised some three years ago, a fund of two thousand dollars for the student or faculty needs of The Hebrew University Law School. The publication of the above volume was made possible by our grant.

The thesis of *The Myth of International Law* is stated thus:

> This is a book on the race between world catastrophe and world government. The author seeks to show that "international law," as also the prevailing forms of international organization, not only do not provide, but are essentially incapable of providing, security among nations. The book's theme is that only by genuine government, but not by any diplomatic or organizational substitute therefor, can human survival be possibly ensured.
>
> The basic weaknesses of international law are subjected to detailed jurisprudential analysis. In addition, the inadequacy—and irrelevance to peace—of such traditional devices as collective security and the balance of power are demonstrated.

The book was published at the Magnes Press, The Hebrew University, Jerusalem. Its price is $4.00. It is distributed in Europe and the United States by the Oxford Press.

INTERNATIONAL LAWYERS CONVENTION In Jerusalem August 17-20, 1958

An International Lawyers convention under the auspices of The Israel Bar Association, The Hebrew University Faculty of Law, and the Tel Aviv University Law School, will be held in Jerusalem, Israel, from the 17th to the 20th of August, 1958. The event will coincide with the celebration of Israel's Tenth anniversary. The Attorney General of Israel, Haim H. Cohn, is chairman of the convening committee, which includes representatives of the Israel Government. Members of the Israel Supreme Court, presidents of Law Schools, and the mayors of several cities in Israel will participate in the panels and sessions of the convention. An extensive program of entertainment and sight-seeing of the country has been arranged for the visitors. For further information address Compass Travel Bureau, 55 W. 42nd St., New York, N.Y.

President Jesmer Recommends Decalogue Members Join American Bar Association

More than ever, states President Solomon Jesmer, the American Bar Association, under the leadership of its young and vigorous president, Charles Sylvanus Rhyne, has become an organization of vital meaning to the public as well as the lawyer.

One of its recent significant acts affecting the public interest is the resolution by the Association opposing the Jenner Bill which seeks substantially to limit the jurisdiction of the United States Supreme Court. Similar action, incidentally, was taken by the Decalogue Society of Lawyers.

Also important is Law Day in the United States which was inaugurated last May 1st by President Rhyne as part of his dynamic program identifying the legal profession with articulate leadership for the welfare of U.S.A. The American Bar Association has published and issued an informative pamphlet on this subject.

President Eisenhower in his Proclamation on Law Day—U.S.A. called upon Americans to "remember with pride and vigilantly guard the great heritage of liberty, justice and equality under law which our forefathers bequeathed to us. Our moral and civic obligation as free men and as Americans to preserve and strengthen that great heritage."

An article in Time magazine quotes President Rhyne as follows:

> The atomic and hydrogen bombs have attuned the people of the world to an overwhelming desire for peace, which is probably stronger than such desire in all history. Here a great opportunity will be won or lost —an opportunity to ensure peace under law. We lawyers must write the necessary legal machinery to maintain essential national sovereignty, yet provide for the peaceful settlement of disputes between nations under the rule of law.

As the Association says in its pamphlet LAW DAY, U.S.A., sudden changes in law do occur, as they do in life and that in times of crisis the law can leap barriers that once seemed insuperable.

Lawyers working in conjunction with each other in a national group can more ably strive to accomplish the solution of troublesome national problems too overwhelming for individuals. Add your voice to that of President Rhyne and his association by becoming a member of the American Bar Association now. The present drive for 12,000 new members, if successful, will bring the total membership to over 100,000—an impressive figure, indeed.

CIVIL RIGHTS—NORTH AND SOUTH

Member Abbot A. Rosen, midwest director of the Anti-Defamation League, addressed our Board on May 16th on *Civil Rights—North and South.*

TYPES OF TRUSTS AND YOUR CLIENTS

By IRWIN A. GOODMAN

Member Irwin A. Goodman who delivered the following lecture before our Society, at the Covenant Club, on November 1, 1957 is a Vice-president and Trust officer of The Exchange National Bank, Chicago.

Introduction

Rather than discuss one specific aspect, phase, or problem in the field of trusts, I deemed it best to review various types of trusts, emphasizing their application and uses as well as calling attention to some of the administrative and legal problems involved, with the thought that some information may be imparted where a particular trust or one of its facets may be helpful in solving a client's problems.

Business Buy and Sell Trusts

First, I would like to discuss with you the business trust, sometimes referred to as a Business Life Insurance Trust. This may apply to a business operated as a partnership, with two or more partners, or a corporation with two or more principal stockholders; it may or may not be funded with Life Insurance and it may or may not be trusted. For purposes of convenience, I will refer to agreements involving two individuals as principals in a business, but my remarks also apply to businesses having more than two principals.

For example, here is business operated by two men as a closed corporation, each owning 50 per cent of the stock. What are a few of the problems facing the survivor? Firstly, he has lost the services of a valuable asset of the business. Secondly, he now finds he has to deal with a widow, children and possibly other heirs of his co-owner. Thirdly, how can he buy out the family or heirs of his deceased associate and where will he get the funds to pay for it? What price shall be paid for the decedent's interest? Will the family or heirs of the decedent be frozen out of the business with no income by way of salary or dividends while the survivor operates the business as he sees fit, or for his personal benefit, until in desperation and in need of funds, they sell out to him at his price, which may well be below the true value?

The Business Buy and Sell Agreement is one of the important tools in planning an estate. Here is a method whereby two or more individuals can provide by contract, during their lifetime, a means of purchasing the interest of the first to die under a pre-arranged plan and at the same time adequately provide for the family of the deceased party.

In the aforementioned example, an agreement is drafted whereby in the event of either party's death, the surviving party agrees to purchase the stock of the decedent either at a pre-determined price or at a price based on a pre-determined formula. This assures the survivor of his sole ownership of the business, without having to negotiate or litigate for a determination of the purchase price, and also assures the family of fair payment for the interest of the decedent. If the purchase price is set out in the agreement there is provision for periodic review and re-determination of the purchase price. If the formula method is used, then it is applied upon the death of one of the parties in order to determine the value of his interest.

IRWIN A. GOODMAN

Now, how shall it be paid for? Often, the survivor or the corporation does not have enough money to purchase the decedent's interest. Therefore, the purchase of Life Insurance is the best way to provide for it. If the insurance is inadequate or if one or both parties are uninsurable, then a payment plan is set forth providing for periodic payments on account of the purchase price, with or without interest.

Today, most of these agreements are trusteed, although they need not be. The Life Insurance policies and stock of the corporation are deposited with a trustee under an agreement embodying all of the provisions of their plan for the purpose of assuring to the parties that the plan will be carried out. In the event of the death of one party, the agreement will generally provide that the trustee collect the insurance and pay the proceeds either (a) to the personal representative of the decedent, (b) directly to his heirs or some specific beneficiary, or (c) the proceeds may be retained by the trustee to be invested and distributed as directed by the agreement. The trustee then delivers the stock to the survivor or to the corporation, depending on the provisions of the plan. (Depositing the stock and the insurance with a trustee thus assures that the plan will be properly carried out.)

In the case of a corporation, either of the following methods of purchase may be used. Under one method, the corporation may own the Life Insurance on the lives of the stockholders and the agreement provide that the proceeds of the insurance be used to pay for the purchase of the stock, which is then delivered to and owned by the corporation. This leaves the surviving stockholder as the sole owner of all of the remaining and outstanding stock. This is considered the preferred method. Although the insurance premiums paid by the corporation are not deductible as a business expense, they are paid out of dollars which have been taxed only once at rates applicable to this corpo-

ration and not doubly taxed as they would be if the stockholders have to pay the premiums out of dollars received as dividends. In Illinois, a corporation may purchase its own stock only out of its earned surplus and may not do so if there is an impairment of its capital. (Chapter 32, Section 157.6 Illinois Revised Statutes, 1957.) Provision should therefore be made in the Buy and Sell Agreement that in the event there is an impairment of its capital and paid-in surplus at the time of the death of a principal, then the surviving stockholder agrees to cause a recapitalization of the corporation to enable it to purchase this stock. The other method is for the individuals to purchase the life insurance on each other's lives. This cross purchase has the effect of keeping the life insurance out of the estate of the decedent and thus preventing both the stock and the insurance from being subject to estate taxes as would be the case if each owned the insurance on their own life.

In a Partnership Buy and Sell Agreement, the same basic principles apply. The primary difference is one of procedure. Here, only the agreement and the insurance policies are deposited with the Trustee, which insurance is cross purchased on the lives of each partner by the remaining partner. Upon the death of one partner, the trustee collects the insurance proceeds, receives the assignment of the partnership interest of the decedent to the surviving partner from the Executor or Administrator of the decedent's estate, and in turn delivers this assignment to the surviving partner, and pays the proceeds of the insurance as provided under the terms of the agreement.

I would also like to call your attention to the section of our statutes with reference to pour-over provisions in Wills. The use of Life Insurance Trusts has been increasing since Section 43a of the Probate Act (Chapter 3, Section 194a, Illinois Revised Statutes, 1957) now permits a Testator to devise and bequeath real or personal property to the trustee of an express trust, even though it is subject to amendment, modification, revocation, or termination. Therefore, a life insurance trust, created prior to the death and prior to the execution of a Will, may be used as a receptacle of all assets of the decedent, poured over by the Will and administered by the trustee in accordance with the terms thereof.

Short Term Trusts

Next, I would like to make some brief observations relating to Short Term Trusts. We often find that clients would like to have the income tax benefits from a living trust and yet retain as much as possible the control of the administration and distribution of the trust estate. It is in this area of the reservation of powers and control by the Settlor that conflicts so often arise between the tax payer and Uncle Sam. To obtain this income tax benefit, the trust must be irrevocable and the settlor must give up control of the income as well as over the corpus.

However, one type of irrevocable living trust which can be effectively used for tax saving purposes is the Short Term Trust. Basically, this is nothing new. What the 1954 Revenue Act did was to codify under Short Term Trusts what was the law prior thereto based upon existing regulations and cases. One of the requirements for a short-term trust is that it must have a duration of at least ten years. There are, however, two exceptions to the ten-year rule. First, if the income from a short-term trust is irrevocably payable to a designated charity, church, hospital or education institution, the trust need only be created for two years, and, secondly, if the income beneficiary dies prior to the ten-year term, the corpus may then revert to the settlor. Under a short-term trust, the settlor deposits with the trustee income producing assets with a provision either for the distribution or accumulation of the income for the benefit of the beneficiaries, and then upon the termination of the trust, the corpus reverts back to the settlor. Thus the settlor takes this income out of his high tax bracket during his higher earning years, and yet retains the right to the corpus of the trust which reverts to his benefit at a later date. If the trust income is distributable, it is taxable to the beneficiary. If it is accumulated, it is taxable to the trustee.

When such a trust is created, a gift tax is payable based upon tables set up by the Government depending upon the term of the trust and the value of the interest of the income beneficiaries. On the other hand, in event of the death of the settlor during the term of the trust, the value of his reversionary interest in the corpus of the trust is subject to Estate taxes. Here, too, there are tables to determine this value and it depends on the number of years remaining between the date of the death of the settlor and the termination of the trust. This reversionary interest of the settlor may be disposed of by him under his Will, in the event of his death, during the existence of the trust.

The short-term trust is an effective means of providing for your child's college education by an accumulation of the income, or to build up a fund to start him in business, or to provide current income for an aged relative.

I have briefly and simply stated the nature and some of the benefits of the short-term trust. However, the tax statute is complicated and technical, particularly with respect to reserving certain powers in the settlor as well as prohibiting certain powers, and it is here that great caution must be exercised in strictly complying with the statute.

Commerce Clearing House and Prentice Hall Tax Services cover the subject but I particularly want to refer you to a reprint of a fine address given by Daniel M. Schuyler of the Chicago Bar, published in Vol. 36, No. 6, at Page 20 of the *Trust Bulletin* of the American Bankers Association (February, 1957). The Appendix to the article refers to the numerous sections of the Internal Revenue Code and Regulations that are applicable, and the footnotes refer to various articles written on the subject as well as additional sections of the Code.

Land Trusts

As most of you are familiar with the Land Trust, I will not dwell on it in detail except to try to answer some of the questions that are frequently asked of me and to call your attention to a recent change in the law relating to this subject.

A land trust has many uses and I will quickly review with you some of their advantages:

1. The Trustee can sign a mortgage secured by the real estate without any personal liability therefor by the beneficiaries (See footnotes (1) (2)) (unless they personally guarantee its payment, which is not the usual case except where residential property is involved).

2. The names of the real parties in interest, namely the beneficiaries, are kept confidential.

3. A judgment against any beneficiary is not automatically a lien against the trust property as would be the case if the property were in the name of the judgment debtor (See footnotes (3) (4) (5)). This does not mean that the beneficial interest cannot be reached by appropriate court action, such as Creditor's Bill or Supplemental Citation.

4. Provision may be made for the succession of the beneficial interest in the event of the death of the primary beneficiary.

5. It is an effective means for group or syndicate purchases of property, thus keeping the title in one centralized ownership, simplifying some of the problems involved in dealing with the title and which may arise if title to the property were in the name of all of the beneficiaries, such

as death, judgments, divorce, or other domestic problems to which an individual or his wife may be subjected.

6. The sale of the property can be effectively made by the simple method of an assignment of the beneficial interest, which does not involve the conveyance of the property or the recording of any deed but merely the transferring of the beneficial interest on the books of the trustee.

7. The beneficial interest may be pledged as collateral for a loan without the necessity of executing or recording a mortgage. This is commonly used by banks and other lenders as collateral for short-term loans. The validity of this was recently upheld in the case of *Horney vs. Hayes*, II Ill. 2nd 178 (1957). In this case, the trust was created some time prior to the pledge and it provided for the sale of the beneficial interest in the event of default. However, the trust was not created specially to provide security for the debt. The court distinguished this case from *DeVoigne vs. Chicago Title and Trust Company*, 304 Ill. 177 (1922), and it appears that if both the creation of the trust and the pledge were part of the same transaction, the court might take a different view. So I want to caution those attorneys who represent lenders to consider both of these cases where their loan is secured by an assignment of the beneficial interest under a Land Trust.

8. There are no rights of partition by the beneficiaries under a Land Trust since their interest is personal property (See footnotes (6) (7)).

It is very easy to state glibly all the benefits of the Land Trust. However, as many of you know, numerous questions arise in their administration and practical operation. I want to emphasize, however, that a land trust is not the panacea or a cure-all for all problems that attorneys often think it is; that you must weigh the particular problem or problems you are faced with and decide whether a land trust can or cannot best serve your purposes at the time you are creating the trust. I would like to discuss for a few moments some of the questions often raised or asked with reference to Land Trusts.

Probably the most common question asked pertains to partition. We are all familiar with the cases which have come down confirming the beneficial interest under a Land Trust is personal property (See footnotes (3) (6) (7) (8)) partition does not lie (6) (7). This is well settled in Illinois. Unfortunately, this is not always considered by an attorney when he creates a land trust, and he is suddenly faced with the question when a dispute arises between the beneficiaries. Actually, some land trusts are created with exactly that thought in mind, namely, that the beneficiaries do not desire partition.

If you desire to retain this right of partition, you can add a provision to the Trust Agreement that any beneficiary may authorize the trustee to convey the trust property to the beneficiaries in accordance with their respective interests, or that any beneficiary may direct the trustee to convey his interest to him, or as he may direct, and thereupon his interest in the trust shall terminate. Once all or part of the property has been conveyed by the Trustee, then the grantee may file a partition suit.

Another question often raised is whether a corporation or a trustee under a living trust may be a beneficiary under a land trust. There is no objection if proper corporate resolutions are passed and furnished the trustee, or if an executed copy of the living trust agreement is furnished the trustee.

Another very important problem in Land Trusts is that of the possible liability of the beneficiaries for income taxes based upon corporate tax rates on the income from the trust property rather than upon individual tax rates. Most attorneys and accountants are familiar with this problem but, unfortunately, group or syndicate purchases are sometimes set up in land trusts without giving this question full and proper consideration. Under Section 7701 of the Internal Revenue Code, an association may be taxed as a corporation. Under the regulations and court decisions (See footnote 9) it has developed that a trust must have four elements before it will be taxed as an association, in the nature of a corporation, namely: 1. There must be associates; 2. The object of the trust must be for joint profit; 3. The trust must have continuity of life, unaffected by death or transfer of interests; and 4. There must be some centralized control of the trust.

Let us say, for example, that the trust has many beneficiaries. It would be quite difficult to administer the trust if it is necessary to obtain the direction of all of the beneficiaries every time you wanted the trustee to take some action. If the power of direction is in all of the beneficiaries, you would not be taxed as a corporation. This, however, makes the administration of the trust very cumbersome. A solution to the problem is to place the power of direction in any beneficiary or group of beneficiaries you desire, but to qualify it by further providing, and this is the important factor, that any beneficiary may at any time, in writing, direct the trustee to thereafter act upon the written direction of all of the beneficiaries. One of the disadvantages to this provision is that any recalcitrant beneficiary could make the administration of the trust cumbersome by invoking his right by so directing the trustee, or could hold up a possible sale or other disposition of the property by refusing to give his consent. The answer is that you must make your choice of which is the lesser of two evils. To save on income taxes you must take your chances with a reluctant beneficiary. I do caution you to give this question your considered thought when creating a land trust with group or syndicate purchasers.

There has been one recent change in our statutes involving land trusts, of which many of you are aware, but in view of the many inquiries I have had, I feel that I ought to make mention of it in closing. This is an amendment to *Chapter 77* of the *Illinois Revised Statutes (1957)* passed at the last session of the Legislature which became effective on July 1, 1957. This important change is in *Section 18b* which permits a corporate trustee of any express trust to waive its right of redemption by a provision in the mortgage to that effect, when the trustee is authorized to do so either by the Trust Agreement or by any person having the power of direction over the trustee. This is very similar to *Section 18a* which permits a corporate mortgagor to waive its right of redemption. This right of Waiver of Redemption by a corporate trustee is limited, however, in that it may not cover any property (a) improved with a dwelling for not more than four families at the time of the execution thereof, (b) if the mortgage is given to secure a loan to be used in whole or in part to finance the construction of a dwelling for not more than four families, or (c) if at the time of the execution thereof, it is used or intended to be used for agricultural purposes. In other words, in the case of a mortgage covering more than four dwelling units, a corporate trustee may waive its right of redemption. However, there is the additional provision that either the trust agreement must specifically permit the corporate trustee to waive its right of redemption or any person having the power of direction over the trustee must direct said trustee to execute a mortgage including the waiver of redemption provision. Where you have an existing land trust, it is not necessary to amend the trust agreement in order to waive the right of redemption. All that is necessary is that the letter of direction authorizing the trustee to execute the mortgage also specifically authorize the trustee to waive its right of redemption. The wording generally used by a corporate trustee to waive this right of redemption is the same as is found in the usual

corporate form of Trust Deed. All subsequent grantees of the trustee are also bound by the provision for waiver of the right of redemption. In the event of a foreclosure of a mortgage where the right of redemption has been waived, under this Section of the Statutes, the deed to the purchaser at the foreclosure sale is issued immediately upon confirmation of the sale and decree or judgment creditors of the mortgagor-trustee in its representative capacity are given three months after the date of sale in which to redeem. This law applies only to mortgages or trust deeds executed after the effective date of the act.

Footnotes

(1) *Conkling* v. *McIntosh*, 324 Ill App 292
(2) *Schumann-Heink* v. *Folsom*, 328 Ill 321
(3) *Chicago Title and Trust Co.* v. *Mercantile Trust and Savings Bank*, 300 Ill App 329
(4) *Kerr* v. *Klotz*, 218 Ill App 654 (abstr)
(5) *Whittaker* v. *Sherrer*, 313 Ill 473
(6) *Aronson* v. *Olsen*, 348 Ill 26 (1932)
(7) *Breen* v. *Breen*, 411 Ill 206 (1952)
(8) *Duncanson* v. *Lill*, 322 Ill 528 (1926)
(9) *Morrissey* v. *Commissioner*, 296 U.S. 344 (and other cases 296 U.S. at 362; 365; 369)

ELMER GERTZ HEADS DECALOGUE FOUNDATION, INC.

At the time the Society, through the initiative of President Solomon Jesmer, undertook to conduct a legal essay contest throughout the State of Illinois, it was determined that a separate non-profit corporation should be formed for the purpose of administering contributions made towards the financing of such contest and any other philanthropic purposes that subsequently may be agreed upon. The legal exploration in connection with this project and the actual formation of the new corporation, Decalogue Foundation, Inc., were expertly done by Decalogue Board member, Eugene Bernstein. The fund-raising leadership of the essay contest was undertaken by member Joseph Grant. Named as the first directors of the new corporation were Eugene Bernstein, Joseph S. Grant, Solomon Jesmer, Benjamin Weintroub, Jack E. Dwork, Meyer Weinberg, David F. Silverzweig, Alec E. Weinrob and Leonard L. Leon.

These directors then unanimously elected the following officers at their first meeting:

Elmer Gertz	President
David F. Silverzweig	Vice President
Joseph S. Grant	Treasurer
Leonard L. Leon	Secretary and Registered Agent
Jack E. Dwork	Assistant Treasurer

HAROLD I. LEVINE

Member Harold I. Levine is the author of an article entitled "Hospital Records as Evidence," published in the February 1957 issue of The Trial Lawyers Guide. This article was reviewed in the February 1958 issue of the Journal of American Medical Association.

Applications for Membership

FAVIL DAVID BERNS, *Chairman Membership Committee*
STANLEY STOLLER, *co-chairman*

APPLICANTS	*SPONSORS*
Gilbert L. Berman	Reginald J. Holzer Favil D. Berns
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Nathan Slutzky	Irving Landesman Norman Eiger
Irving Slutzky	Irving Landesman Norman Eiger
Herbert L. Wisch	Herbert Lowinger Frank P. Kronenberg
Harry L. Yale	Elmer Gertz Favil D. Berns
Milton J. Zacksman	Meyer Weinberg Favil D. Berns

A PLAQUE FOR THE EDITOR

Benjamin Weintroub, editor of The Decalogue Journal and editor and publisher of The Chicago Jewish Forum, was the recipient of a plaque from the Covenant Club at its last annual meeting on May 15, 1958. The citation was given "in appreciation of a decade of devoted duty as an officer and a member of the Board of Directors of the Covenant Club."

Member Judge Henry L. Burman of the Superior Court, Cook County, made the formal presentation of this award.

CIVIL RIGHTS AND CIVIL LIBERTIES

A Review of Civil Rights and Civil Liberties Legislation in the 1957 Illinois General Assembly. Prepared by members Byron S. Miller, Joseph Minsky, Milton I. Shadur, Morris L. Simons of the Chicago Council of the American Jewish Congress. Condensed version by Joseph Minsky, staff counsel.

The past few years have witnessed a greater role for the Federal Government in protecting individual liberties and rights—an inevitable by-product of the increasing centralization of national life. This however should not blind us to the potential of state and local governments to contribute to preservation and extension of these basic rights.

This review of the acts of the 1957 Illinois General Assembly illustrates this potential. Complex problems of procedural due process and free speech were attacked and several significant laws enacted; in the area of religious liberty, both good and bad legislation was passed, only to be nullified by a governor's veto, and in the area of group discrimination, only minor steps were taken while basic bills were scuttled. In spite of these shortcomings, the accomplishments of the 1957 Illinois General Assembly can be assessed, on balance, as enhancing individual freedom.

Group Discrimination

IN TEACHER SELECTION
(Enacted)

In an era when legislation on racial and religious discrimination is of paramount political importance, the lack of any basic enactment in this session of the Illinois General Assembly is striking. The only important civil rights law enacted seeks to bar discrimination in the employment of school teachers because of color, creed, race or nationality, but the form of this law (H.B. 254, sponsored by Rep. Paul Simon) presents inherent enforcement weaknesses.

IN PUBLIC ACCOMMODATIONS
(Enacted)

The Illinois Civil Rights Law (Ill. Rev. Stat. 1955, Ch. 38, Sec. 125 ff) was amended to include public golf courses and driving ranges as public accommodations which must be made available to all persons for full and equal enjoyment. (H.B. 284, sponsored by Rep. Carter.)

BOMBING AND DYNAMITING
(Enacted)

Laws prohibiting acts of violence are especially important in racial tension situations. H.B. 103, sponsored by Rep. William Robinson strengthened the Bombing and Dynamiting provision of the Criminal Code (Ill. Rev. Stat. 1955, Ch. 38, Sec. 238) by deleting the requirement that a person actually be injured for there to be a violation of the law. As amended, damage or attempted damage of a house used as living quarters by any explosive means is a felony.

EQUAL JOB OPPORTUNITIES
(Defeated)

These few positive accomplishments of the General Assembly are more than outweighed by its failure to enact the Equal Job Opportunities Bill (H.B. 185, S.B. 129). Illinois lags behind fifteen other states which have some form of EJO legislation. Although this year's EJO bill—which would have established a commission, permitted conciliatory conferences, provided for subpoena of witnesses for public hearings and judicial enforcement when necessary—passed the House; as usual it failed in the Senate. EJO was the most important civil rights bill in the 1957 session of the General Assembly.

It is easy to assess fault for the failure to enact EJO in Illinois, but the fault belongs to no one because it lies with everyone. The Governor gave no leadership. No political party made EJO a *must* in its legislative program. No major newspaper endorsed EJO. Religious and community support was lacking. Even though the state human relations groups cooperated in presenting excellent testimony at the General Assembly Committee hearings, many civil rights groups failed to mobilize citizen support for EJO. The future of EJO in Illinois is dim unless groups endorsing it, including the political parties, are willing to do a thorough job in its support.

HOUSING SEGREGATION
(Defeated)

Another failure to act in a basic field involved the defeat of bills (H.B. 528, S.B. 349) to amend the Civil Rights Law to outlaw discrimination in the renting or sale of publicly-assisted housing accommodations, including housing built with FHA or VA guaranteed loans. This bill sponsored by Rep. Abner J. Mikva and Sen. Marshall Korshak, passed the House but was defeated in the Senate. As prejudice and racial tension are nourished by residential segregation this type of remedial legislation is necessary.

Freedom of Speech

The General Assembly gave meaningful protection to constitutional guarantees of freedom of speech by enacting legislation outlawing wire-tapping, providing safeguards for those testifying before legislative commissions and defeating numerous censorship bills.

ELECTRONIC EAVESDROPPING
(Enacted)

Prohibition of the use of electronic eavesdropping (commonly known as "wire-tapping") devices, with certain specified exceptions for normal business and broadcasting activities was its most singular legislative accomplishment. H.B. 1210, sponsored by Rep. Hurley and based on a draft bill prepared by the Civil Rights Committee of the Chicago Bar Association prohibits the admission of any such illegally obtained evidence in judicial proceedings and, in addition, makes electronic eavesdropping a misdemeanor. The law also subjects the eavesdropper, his principal and all who aid and abet him, to actual and punitive damages in favor of the parties whose conversation was so overheard. A companion bill (H.B. 1211) makes violation of this law by a private detective grounds for suspension or revocation of his license.

FAIR LEGISLATIVE PROCEDURES
(Enacted)

Fair procedure for those testifying before legislative committees and commissions has been the subject of much attention nationally. Fortunately, testimony before Illinois Legislative Committees is usually voluntary and rarely investigatory. Therefore, the complicated problems of "self-incrimination" under the 5th Amendment or the scope of the committee's power rarely arise. However, in recent years a few legislative commissions did present serious problems as to the rights of those appearing before them.

Two bills in this session of the General Assembly dealt with this matter. S.B. 46, sponsored by Sen. Lynch, was a comprehensive bill embodying procedural rules for legislative commissions and committees. It set out numerous safeguards for any person who was required to testify at any hearing or whose name was adversely mentioned at a public hearing. H.B. 80, sponsored by Rep. Wendt, was a declaration of the same policy limited to legislative commissions but lacked many of the substantive provisions of S.B. 46.

Although S. B. 46 was the sounder of the two bills, as often happens, the milder one was enacted. Despite its weaknesses, however, H.B. 80 should be a meaningful first step in providing procedural safeguards and in permitting rebuttal of defamatory testimony at a public but privileged hearing.

Procedural Due Process

The General Assembly acted definitively to provide important procedural safeguards for those who become involved with law enforcement agencies.

SEXUALLY DANGEROUS PERSONS
(Enacted)

Important protections were incorporated into the existing law relating to the method of determining whether a penitentiary inmate is a sexually dangerous person (Ill. Rev. Stat. 1955, Ch. 108, Sec. 112 ff). S.B. 297, sponsored by Sen. Korshak, gives the respondent the right to a jury trial and to request counsel and, after conviction, the right to request a hearing as to his recovery. Court hearings are required on all petitions for adjudication. The proceedings are civil in nature, with the Civil Practice Act applicable.

COURT OF CLAIMS
(Enacted)

S.B. 141, sponsored by Sen. Smith, gives the Court of Claims jurisdiction to adjudicate claims against the State of Illinois for time unjustly served in prison where the prisoner proves his innocence of the crime for which he was convicted. This procedure should be a marked improvement over the previous method of requiring special appropriation by the General Assembly.

FILING OF CRIMINAL CONFESSIONS
(Enacted)

S.B. 261, sponsored by Sen. Smith, requires that the names and addresses of those present at the taking of a confession and the confession itself be made part of the record at least 24 hours prior to judicial hearing on the confession. This law should be somewhat helpful in preventing coerced confessions although 24 hours is not much time for investigation.

JAIL TERMS
(Enacted)

H.B. 266 and H.B. 267, sponsored by Rep. Carter, provide that time served in jail prior to or after sentence should be credited towards a sentence to the penitentiary or the reformatory. Prior practice did not give credit for the many months often spent in jail awaiting trial, during an appeal or waiting transfer to the penitentiary.

SHOPLIFTING FALSE ARREST
(Enacted)

The only legislation adversely affecting individual liberty was H.B. 333, permitting merchants and their agents to retain and search persons suspected of shoplifting without risk of a subsequent false arrest suit. It is true that merchants have serious problems in detecting shoplifters and that the new law requires such detention and search to be reasonable; nevertheless, this is a dangerous inroad upon the constitutional right to be free from unreasonable search and seizure. This law sets a dangerous precedent by providing additional arrest and search powers to private persons who do not have the public responsibility of duly constituted law enforcement agencies.

Religious Liberty

In the area of religious liberty, the General Assembly dealt with a number of controversial problems but little change ultimately resulted.

SUNDAY CLOSING
(Vetoed)

Religious freedom was supported by Governor Stratton's veto of H.B. 946, a compulsory Sunday closing law for automobile dealers. This bill clearly violated the American constitutional principles of religious freedom and separation of Church and State.

A comprehensive Sunday Closing Law (H.B. 543) was introduced but never emerged from committee. Instead, the forces favoring Sunday closing laws aimed to establish the principle by covering one business at this time. The bill clearly indicated that this law would be later extended to cover other businesses. H.B. 946 engendered considerable public discussion and barely passed the House and Senate over determined opposition led by Rep. Kaplan, Rep. Loukas, and Sen. Cherry.

ABSENTEE VOTING FOR RELIGIOUS HOLIDAYS
(Vetoed)

However, Gov. Stratton prevented an extension of religious liberty by vetoing H.B. 434, which would have extended the privilege of absentee voting to voters unable to be present at the polls on election day when it falls on a religious holiday. With elections and primaries held in April, there is always a great possibility of elections falling on Jewish Holy Days. Similar legislation has previously been enacted in three other states. Sponsored by Rep. Michael F. Zlatnik, the bill readily passed the General Assembly. It is expected that a similar bill will be introduced next session.

Conclusion

During its brief six-month session, the Illinois General Assembly concerned itself with many complex and difficult problems. Solutions for some of these problems were attempted by the legislation reviewed here. Particularly in the field of procedural due process, the 1957 General Assembly showed genuine concern for protection of the individual from possible government abuses. However, in the area of group discrimination, the General Assembly failed to attempt any legislative solution to the pressing problems of racial and religious discrimination in housing and employment. It can only be hoped that at the next session it will recognize the importance of group discrimination and enact legislative remedies towards eliminating racial and religious discrimination in Ilinois.

The Decalogue Society of Lawyers extends sentiments of profound condolences to its past president Elmer Gertz and his family upon the passing of his wife, Ceretta S. Gertz, on April 14th, 1958.

PHILIP H. MITCHEL Elected President of the Covenant Club

On the evening of May 15th at the annual 1958 dinner-meeting of the Covenant Club of Illinois, member Philip H. Mitchel was elected and installed as president of the Club.

Mitchel, born in Chicago in 1904, was graduated from William Penn Grammar School and John Marshall High School. He attended the University of Chicago, was graduated from De Paul University Law School, and was admitted to the Illinois Bar in 1926.

Mitchel has a long and distinguished record in public, fraternal, and communal activities. He is a former Assistant Corporation Counsel of the City of Chicago, and, presently, Master in Chancery of the Circuit Court of Cook County. Especially active in B'nai B'rith activities, he is a past president of Chicago B'nai B'rith Men's Council which consists of forty-seven lodges and has on its rolls more than 25,000 members. He is a past president of District Grand Lodge No. 6 of B'nai B'rith composed of lodges of eight midwestern states and four provinces in Canada.

Mitchel is the father of two children, Michael M., and Diane Gilbert. Both are married. He resides with his wife Lillian at 2970 Lake Shore Drive. His law offices are at 33 No. La Salle St.

Other members of the Decalogue Society elected to office were, Norman Becker, second vice-president, Solomon E. Harrison, secretary; and, as members of the Board of Directors, Joseph J. Karlin, George S. Lavin, Bernard H. Sokol, and Max Rittenberg. Attorney at law David Jacker was elected first vice-president of the Club.

HONOR JUDGE JOHN P. BARNES

Judge John P. Barnes, Chief Judge, United States District Court, Northern District of Illinois, retired, was recipient of the CHICAGO GRADUATE CHAPTER, TAU EPSILON RHO LAW FRATERNITY PUBLIC SERVICE Award on March 31st, at a dinner tendered to him at the Chicago Bar Association.

Member Zeamore A. Ader, Chancellor of the Graduate Chapter, was chairman of the Award committee and stated in his presentation comments that the basis for selection of Judge Barnes was his example of moral fortitude, efficiency in court administration, protection of civil rights and the quality of justice which he dispensed during his long tenure on the Bench. Chairman Ader referred to Judge Barnes as a courageous leader who acted for preservation of constitutional liberties and, whose trial court stand in certain essential facets of fair trial procedure, later became the rule enunciated by the Supreme Court of the United States.

Other members of the Decalogue Society who actively participated in the event were Max A. Reinstein, Sheldon L. Glieberman, Stanley H. Levin, William Greenhouse, Dan Weinberger, Ralph M. Schwartzberg, and Eugene Kart.

Judge Barnes, in his response discussed punishment as a deterrent to crime and its effects upon the punished. The Judge said:

> To have the maximum effect as a warning punishment should be both swift and sure. To the extent that punishment is delayed or of uncertain application, to that extent its effect as warning is destroyed. That punishment be swift the enforcement of criminal laws must proceed with deliberate speed. That punishment be sure the enforcement of criminal laws must not be a 'respecter' of persons. If punishment for crime is sought to be made too severe, it will be neither swift nor sure. Prosecuting officers, courts, and society itself will pause and hesitate with the result that punishment will cease to be either swift or sure.

DECALOGUE OUTING ON JULY 17 AT CHEVY CHASE COUNTRY CLUB

Chevy Chase Country Club will again be the scene of the Decalogue Society's twenty-fourth all day outdoor recreational gathering on Thursday July 17, 1958. Scheduled this year, in addition to the popular Decalogue golf tournament, are swimming exhibitions and races, social swimming, horseshoe pitching, card games, and a book review session. Numerous door prizes will be presented to members and guests in the spacious air-conditioned dining room and a fine orchestra will provide dancing music. Tickets are $10.00 per person; teen-agers are welcome.

Meyer Weinberg is chairman of the outing and will be assisted by L. Louis Karton. Co-chairmen and their committees are: Marvin Victor and Favil D. Berns, distribution of tickets, H. Burton Schatz and Zeamore Ader, awards and gifts, William D. Sampson and Hamilton Clorfene, golf tournament, Matilda Fenberg, book review session, Louis J. Nurenberg and Roy Diamond, swimming, and Leon Kovin and Isadore Baskin, horseshoes.

Early reservations are advised for those desiring fixed starting times for golf. For tickets and further details telephone or write the Decalogue offices at 180 W. Washington Street, ANdover 3-6493.

PAUL G. ANNES

Past president Paul G. Annes was elected a national vice-president of the American Jewish Congress at its recent biennial convention in Miami Beach, Florida. Annes will continue as president of the Chicago Council of the American Jewish Congress.

THE ROBINSON-PATMAN ACT

By LOUIS J. NURENBERG

Member of our Board of Managers Louis J. Nurenberg is on the teaching staff of La Salle Extension University.

The Robinson-Patman Act[1] was enacted on June 19, 1936, as an amendment to the Clayton Anti-Trust Act. Briefly, its avowed purpose was the prevention of price discrimination in interstate commerce between buyers of the same seller if the effect of such discrimination was to lessen competition. Proof may be introduced by the accused that due allowance had been made for differences in cost of manufacture, sale or delivery. The Act provides that a prima facie case is made by the showing of discrimination in price, services, or facilities furnished and then it becomes incumbent on the person charged with a violation to justify the price differential. Good faith in meeting competition is expressly made an additional defense.

In the over two decades that have elapsed since the effective date of this important bit of federal legislation, there have been numerous decisions rendered by the United States Courts and the Federal Trade Commission which provide adequate basis for the evaluation of the effectiveness of the Act. Protection against price discrimination was unknown at common law. The need for this law grew from the practices of large national organizations of using their financial power to sell below cost in selected local areas to drive out competition while holding the price level in all other regions. A discussion of a few of the more significant Court and Commission decisions may show how far the Act has gone to wipe out or retard these evil practices.

The most perplexing problem under this Act is to decide how much discount is warranted in volume sales to large purchasers as contrasted with smaller purchasers. The Federal Trade Commission has held that a lump sum estimate of costs in selling or delivering is not sufficient to show justification for price differentials where a sliding scale for the price of yeast was employed but an arbitrary formula allocated costs unrealistically to the disadvantage of lesser purchasers.[2] Also, in the case of a company selling automotive supplies on discounts from two per cent to sixteen per cent based on the quantity purchased, it was held that savings in costs of sales, advertising and processing orders did not justify the discounts given.[3] A leading case decided that a company, which was selling salt for $1.35 per case for those buying more than 50,000 cases per month and raising the price gradually for other buyers so that those who bought in loads of less than a carload were charged with $1.60 per case, had violated the Act. Only five companies were large enough to qualify for the lowest price category. The United States Supreme Court held,

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> . . . we believe to be self-evident . . . that there is a "reasonable possibility" that competition may be adversely affected by a practice under which manufacturers and producers sell their goods to some customers substantially cheaper than they sell goods to the competitors of this customer. This showing in itself is sufficient to justify our conclusion that the Commission findings of injury to competition were adequately supported by evidence.[4]

This favorable decision for smaller purchasers was offset by the recent decision by the United States Supreme Court in Federal Trade Commission vs. Standard Oil Co.[5] This historic case began in 1940 and the 1958 appearance before the Court was the second one for these parties. The Standard Oil Co. sold gasoline at retail prices to stations owned by it, to independent retailers and at wholesale price to four jobbers, two of these also selling at retail. The Court declared in an earlier opinion (1951), "It is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet a lawful and equally low price of a competitor."[6] The Court remanded

the case to the Commission for further proof of good faith but the Commission took no new evidence and instead held against Standard on the evidence already adduced. The Commission was reversed by the U. S. Court of Appeals and in its 1958 opinion the U.S. Supreme Court stated that "a proper decision of the controversy depends on a question of fact" and therefore, it would not interfere with the lower court's decision. The Supreme Court stated, "Standard's use here of two prices, the lower of which could be obtained under spur of threats to switch to pirating competitors is a competitive deterrent . . . which we believe within the sanction of . . . the Robinson-Patman Act."[7] The dissenting opinion of Justice Douglas joined in by Chief Justice Warren and Justices Black and Brennan stated that the purpose of the Act was defeated by this granting of a discriminatory price unjustified on the basis of costs or function or that it was in good faith meeting the *lawful* offer of a competitor.[8] Although this decision does represent a setback it is wise to remember that this case was decided after almost eighteen years of litigation and it may be expected that a future seller will hesitate to grant a price differential under similar circumstances knowing that this case was decided on a factual basis by a narrow margin.

On the same question of excessive price discounts the U. S. Supreme Court, in the same session, decided that once a ruling was made by the Commission that a party was in violation of the Act, no court has the right to postpone the operation of the cease and desist order until competitors are also restrained and that only the Commission "is competent to make an initial determination . . . whether or not the nature of . . . competition is such as to indicate identical treatment of the entire industry by an enforcement agency."[9] It is interesting to note that this decision resolved conflicting opinions of U.S. Courts of Appeals from two circuits.

An important opinion was rendered by the U. S. Supreme Court in 1958 in the case of a milk company which sued another milk company for treble damages under Section 3 of the Act[10] for deliberately underpricing its milk for the purpose of driving petitioner out of business. The Court held by a five to four opinion with Chief Justice Warren and Justices Douglas, Black and Brennan dissenting, that after a consideration of the legislative history of the Act, this was the criminal section of the Act and could not be used as a basis for a private suit for a civil offense which was barred only by this section.[11] Justice Douglas in his dissenting opinion noted that the Department of Justice had never enforced the criminal section of the Robinson-Patman Act and because the majority of the Court had held that this section is not available in actions between private parties the statute has been in effect repealed.[12] The majority opinion expressly noted that this opinion did not affect private suits for treble damages under Section one of the Act in a footnote stating that a previous case decided by the U. S. Supreme Court did not cover the issues of the present opinion.[13]

Another section that has been made ineffective by judicial interpretation is Section 1(f)[14] which makes it unlawful . . . "knowingly to induce or receive a discrimination in price." In deciding that a buyer who received a lower price than its competitor had not been proved guilty of violating this section, the Court stated,

> The Commission must show that such difference could not give rise to sufficient savings in the cost of manufacture, sale, or delivery to justify the price differential, that the buyer knows these were the only differences, and should have known that they could not give rise to sufficient savings.[15]

This decision makes enforcement of this section almost impossible.

On the whole, most of the reported decisions indicate a trend towards holding the respondent guilty of violation of the Act, no matter what form of indirection is used. Thus a cosmetic company which allowed favored purchasers a free demonstrator was held guilty[16] and had to pay treble damages for a similar offense in another case.[17] A can company which gave discounts purely on the basis of volume was ordered to pay treble damages[18] and a seller of rubber stamps who sold identical stamps at different prices was found guilty of discrimination even though he claimed he had to do so to meet the competition of former employees who were trying to steal his established customers.[19] A corn refining company which paid $750,000 to advertise the candy of a purchaser of its dextrose was held in violation of the Act despite the fact that both the purchaser and the seller were in the same state, on the grounds that its other purchasers were from other states and this was sufficient to show discrimination in sales in interstate commerce.[20] A company which charged brokerage fees for merchandise bought for its own account amounting to 60% of its business was denied the right to commissions[21] as was a buyer who contracted for 2% discount for services rendered in analyzing the very commodities he was purchasing.[22] However, in a recent decision by the District Court in Chicago, it was ruled that defendant suppliers in a treble damages suit who advertised in a magazine exclusively sold in the stores of their customer grocer were not guilty of discrimination since it was impossible to make payments for advertising available on proportionately equal terms, the facts showing that none of the plaintiffs were large enough to afford such a publication.[23]

The enforcement of Section 1 of this Act may be done by complaint to the Federal Trade Commission under Section 11 of the Clayton Act[24] or an injunction suit by the United States under the direction of the Attorney-General in a U. S. District Court under Section 15.[25] More interesting to the general legal practitioner is the fact that private suits for injunction may be brought under Section 16[26] and private suits for treble damages may be brought under Section 4.[27]

The cases summarized and discussed in this article are, I believe, fairly representative of the decisions under the Act but, regrettably, do not include the entire range of cases bearing on this subject. The history of the enforcement of the Act leads to the impression that the Act is a strong and well-functioning law. The present recession may, perhaps, once again tempt manufacturers and others to woo customers by price undercutting. From past decisions of the courts and the Federal Trade Commission, however, it is reasonable to expect that price differentials will have to be seriously justified to come within the sanction of the Robinson-Patman Act.

[1] 15 U. S. C. No. 13

[2] In the Matter of Standard Brands, Inc. 30 F.T.C. 1117, 1155 (1940)

[3] *Moog Industries, Inc. vs. F.T.C.* 238 Fed. 2nd 43 (1956)

[4] *Federal Trade Commission vs. Morton Salt Co.* 334 U.S. 37 (1948)

[5] *F.T.C. vs. Standard Oil Co.* 355 U.S. 396 (1958)

[6] *F.T.C. vs. Standard Oil Co.* 340 U.S. 231 (1951)

[7] *F.T.C. vs. Standard Oil Co.* 355 U.S. 396, 404 (1958)

[8] IBID 355 U.S. 396, 410 (1958)

[9] *Moog Industries, Inc. vs. F.T.C.* 355 U.S. 411, 413 (1958)

[10] 15 U.S.C. No. 13a.

[11] *Nashville Milk Co. vs. Carnation Co.* 355 U.S. 373,382 (1958)

[12] IBID 355 U.S. 373, 387, 388 (1958)

[13] IBID 355 U.S. 373, 376

[14] 15 U.S.C. No. 13 (f)

[15] *Automatic Canteen Co. vs. F.T.C.* 346 U.S. 61 (1953)

[16] *Elizabeth Arden, Inc. vs. F.T.C.* 156 Fed 2nd 132 (1946)

[17] *Elizabeth Arden, Inc. vs. Gus Blass* 150 Fed 2nd 988 (1945)

[18] *American Can Co. vs. Bruce's Juices, Inc.* 190 Fed. 2nd 73 (1951)

[19] *Samuel H. Moss, Inc. vs. F.T.C.* 148 Fed. 2nd 378 (1945)

[20] *Corn Products Refining Co. et al vs. F.T.C.* 324 U.S. 726, 743 (1945)

[21] *Southgate Brokerage Co., Inc. vs. F.T.C.* 150 Fed. 2nd 607 (1945)

[22] *Bayson vs. Jessop Steel Co.* 90 Fed. Supp. 303 (1950)

[23] *State Wholesale Grocers vs. Great A. & P. Co.* 154 Fed. Supp.** (1957)

[24] 15 U.S.C. No. 21

[25] 15 U.S.C. No. 25

[26] 15 U.S.C. No. 26

[27] 15 U.S.C. No. 15

Past President Archie H. Cohen Dies

Past president of The Decalogue Society of Lawyers (1951-52) Archie H. Cohen died on May 21 at his home, in Evanston, Illinois.

He was most active and popular in Chicago's professional and communal life. Admitted to the Illinois Bar some forty-three years ago he gave freely of his time and knowledge to advance the Bar's finest traditions both as a teacher and a perennial student of the law. A gifted speaker, he articulated in this community and, frequently, throughout the Union, a philosophy of American patriotism and allegiance to the American credo. He was a most sought after orator for hundreds of public functions and cheerfully gave of his substance and abilities to advance worthwhile causes. He had a tremendous fund of humorous stories and his appearance on a public platform was immediately welcomed with applause and smiles.

Cohen was intimately and long associated with the work of B'nai B'rith. He served for more than a generation in various posts of that organization on a national level. He was a past president of Ramah Lodge, B'nai B'rith, and of District Lodge No. 6, B'nai B'rith. Also, of Young Men's Jewish Charities.

Mr. Cohen is survived by his widow Rose, a son Nathan M., and a daughter Mrs. Ruth Hyman of Elgin, Illinois. Below is a biographical sketch of our past president.

LL.B., John Marshall Law School. Admitted to the Illinois bar, 1915, and began practice in Chicago; associated at various periods with James Hamilton Lewis, Richard S. Folsom, Wallace Streeter, Charles M. Haft, Maj. George R. Harbaugh; professor of law, Loyola University 1927-33; Master of Chancery Circuit Court of Cook County, Illinois, 1927-33; Referee in Bankruptcy U.S. District Court, Eastern Division Northern District of Illinois, 1934-44. He was a member of the Board of Review, General Services Administration, from 1953-56. Member of the Board of Directors, Young Men's Jewish Council for Boys; member of Board of Directors, Jewish Charities of Chicago. Member, American Illinois State and Chicago bar associations. National Americanism Commission, vocational service bureau of B'nai B'rith. Elk, past exalted ruler honorary life member, Chicago lodge 4. Member, Covenant Club of Illinois.

MAX A. KOPSTEIN, CHAIRMAN

Member Max A. Kopstein was chairman of the 1958 annual Combined Jewish Appeal Lawyers Division dinner which was held on May 5th in the Morrison Hotel. Many members of our Society participated in the event.

Colonel Gideon Elrom, a high ranking Israel Air Force officer who took a leading part in the Sinai campaign, was the principal speaker at the affair.

THE DU PONT - GENERAL MOTORS CASE

An address by Willis L. Hotchkiss, United States Attorney, Department of Justice, Anti-Trust Division, before The Decalogue Society of Lawyers, on December 13, 1957. Condensed by member Louis J. Nurenberg.

The inception of this case came about in the following manner. An attorney with the Anti-Trust Division of the Department of Justice happened to run across a single fact that the Du Pont Company owned 23 per cent of the stock of General Motors. Given that single fact, coupled with information in the public realm, almost any anti-trust attorney could at that point reconstruct the essential anti-trust elements of the relationship without leaving his chair.

Here are the three steps in the basic reasoning underlying this reconstruction. First, a single stockholder such as Du Pont, owning 23 per cent of 44,000,000 shares of voting stock, would be in an ideal position to influence and, probably, in fact, control the prime policies of General Motors.

Second, General Motors is a huge market for certain of the products produced by Du Pont. Why should not Du Pont use its stock leverage to get the business or the bulk of it?

Third, Du Pont's use of its minority stock interest to gain a preferential position in the General Motors market must of necessity have the effect of excluding competitors from that market.

To test the hypothesis, an investigation was authorized and the Antitrust Division first sought voluntary access to the files of the companies involved. There being difficulties in achieving this, the Department authorized a grand jury investigation which got under way in 1948. This investigation continued for nearly a year, with the complaint being filed in 1949, over two years after the initial recommendation for an investigation had been made.

In due course this case went to trial, was lost by the Government, appealed to the Supreme Court of the United States, which later handed down an opinion reversing the District Court.

Massive as was the case in all of its aspects, it retained, throughout, an underlying simplicity as to structure and issues.

In the trial of the case the Government's evidence was wholly documentary. These documents filled eight large sized loose leaf binders, drawn almost wholly from the files of the defendants.

Although the Government's case was introduced in approximately one week, the trial lasted nearly seven months. Nearly 2,000 exhibits were presented and 52 witnesses were heard. The record on appeal (excluding briefs) filled over 6,300 pages.

The economic stakes involved in the suit were enormous. At issue, in the final analysis, was the control by Du Pont, the world's largest chemical company of General Motors, the world's largest automobile manufacturing company. This followed because the complaint prayed that Du Pont be required to divest itself of its stock interest in General Motors and that its officers, directors, and employees be barred from serving as officers or directors of General Motors and vice versa. Furthermore, the complaint went beyond the Du Pont Company to two Du Pont family holding companies which, it was charged, controlled the Du Pont Company. One of these holding companies, Christiana Securities Co., holds 27 per cent of the Du Pont stock as well as some General Motors stock. The other is the Delaware Realty and Investment Co., whose stock is held 100 per cent by the families of the eight brothers and sisters of Pierre S. du Pont, long the president and chairman of the board of Du Pont and for many years president and then chairman of the board of General Motors. Delaware holds approximately one-third of Christiana stock as well as some Du Pont stock. The Du Pont family members hold over two-thirds of Christiana voting stock.

The Du Pont Company, following the 1955 stock split, held 63,000,000 shares of General Motors stock which had originally cost Du Pont $49,000,000. By 1955 this stock had a market value of two and three-quarters billion dollars. In the intervening years, Du Pont had collected close to one and a half billion dollars in cash dividends. In addition, General Motors as a market for Du Pont products was a substantial asset. In 1947, for example, Du Pont sales of finishes alone to General Motors amounted to approximately $19,000,000.

A distinguishing feature of the seven month trial was that it focused primarily on two factual issues. These were, first, did Du Pont use the 23 per cent stock interest it had acquired in General Motors in 1917 to gain an operating influence or control over General Motors? Second, did it utilize that stock interest to acquire a preferential position in General Motors as a market for the products produced by Du Pont and required by General Motors?

The complaint charged a violation of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act. But, at the trial, extraordinarily little attention was devoted to these statutes or to legal issues. The battle revolved primarily around the two factual issues.

The trial court, in a 220 page opinion, held against the Government on each factual issue. On the issue of control, for example, the court concluded, "There is substantial failure of proof that Du Pont controlled General Motors even though it was voting at times 51 per cent of the stock voted at stockholders meetings." On the issue of trade relations, the court held in substance that these were the product of arms-length dealings between the two companies. The findings make it clear that the court had given far greater credence to the oral testimony at trial of officers of the defendants than to the documents which these same officers and their associates had written contemporaneously with what had taken place.

The Supreme Court by a four to two decision reversed the District court by drawing entirely different inferences from essentially the same facts which were noted in the District court's decision. In doing this, the Supreme Court drew its inferences wholly from the contemporaneous documents and ignored the oral testimony of defendants' officials.

The Court, after reviewing the history of Du Pont's acquisition of General Motors stock and the motivating factors as disclosed by contemporaneous documents authored by top officers of Du Pont, reached the following conclusion:

> This background of the acquisition, particularly the plain implications of the contemporaneous documents, destroys any basis for a conclusion that the purchase was made "solely for investment." Moreover, immediately after the acquisition, Du Pont's influence growing out of it was brought to bear within General Motors to achieve primacy for Du Pont as General Motors' supplier of automotive fabrics and finishes. (U. S. 15)

The Court, in detailing the methods whereby Du Pont's influence was initially brought to bear to achieve this primacy for Du Pont products wryly points out that J. A. Haskell, "Du Pont's former *sales* manager and vice-president, became General Motors' vice-president in charge of the operation committee" and went on to say:

> Haskell frankly and openly set about gaining the maximum share of the General Motors market for Du Pont. . . . (U. S. 16)

After detailing the methods used by Haskell, the Court summarized the results of his tactics:

> Thus sprung from the barrier, Du Pont quickly swept into a commanding lead over its competitors, who were never afterwards in serious contention. Indeed General Motors' then principal paint supplier, Flint Varnish and Chemical Works, early in 1918 saw the handwriting on the wall. The Flint president came to Durant asking to be bought out, telling Durant, as the trial judge found, that he "knew Du Pont had bought a substantial interest in General Motors and was interested in the paint industry; that . . . (he) felt he would lose a valuable customer, General Motors." The Du Pont Company bought the Flint works and later dissolved it. (U. S. 17)

From all this evidence the Court reached the following conclusion:

> The fact that sticks out in this voluminous record is that the bulk of Du Pont's production has always supplied the largest part of the requirements of the one customer in the automobile industry connected to Du Pont by a stock interest. *The inference is overwhelming that Du Ponts' commanding position was promoted by its stock interest and was not gained solely on competitive merit.*
>
> We agree with the trial court that considerations of price, quality and service were not overlooked by either du Pont or General Motors. Pride in its products and its high financial stake in General Motors' success would naturally lead Du Pont to try to supply the best. But the wisdom of this business judgment cannot obscure the fact, plainly revealed by the record, that *Du Pont purposely employed its stock to pry open the General Motors market to entrench itself as the primary supplier of General Motors' requirements for automotive finishes and fabrics.* (Emphasis supplied) (U. S. 18-19)

The Court furthermore pointed out in a footnote that far from there being any diminution of the Du Pont influence over General Motors with the passage of time, the influence had in fact increased:

> The potency of the influence of Du Pont's 23% stock interest is *greater today* because of the diffusion of the remaining shares which, in 1947, were held by 436,510 stockholders; 92% owned no more than 100 shares each and 60% owned no more that 25 shares each. (U. S. 20)

In view of the Court's treatment of the facts, it would appear that it could have disposed of the case on the basis of finding that there had been a violation of Sections 1 and 2 of the Sherman Act. The Court instead placed its legal conclusions wholly under Section 7 of the Clayton Act.

This charge applied only to the Du Pont-General Motors relationship and consequently, loomed larger in the appeal than it had in the trial court. The reason for this is that the case below had included additional defendants not involved in the Section 7 charge: The United States Rubber Company and numerous individuals. The Sherman Act charge blanked in all of these defendants.

As the complaint was filed in 1949, its charge related to Section 7 as it stood before the passage of the 1950 amendment, which made clear that the Act applied to vertical as well as horizontal acquisitions and to asset acquisitions as well as stock acquisitions.

The applicable portion of the first paragraph of old Section 7 reads:

> That no corporation . . . shall acquire . . . the whole or any part of the stock . . . of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce.

The Supreme Court's analysis of old Section 7, however, is equally applicable to the amended act.

The Supreme Court's language makes clear that it regards Section 7 as a formidable weapon in the

antitrust arsenal. Early in its opinion the Court stated:

> Section 7 is designed to arrest in its incipiency not only the substantial lessening of competition from the acquisition by one corporation of the whole or any part of the stock of a competing corporation, but also to arrest in their incipiency restraints or monopolies in a relevant market which, *as a reasonable probability*, appear at the time of suit *likely to result* from the acquisition by one corporation of all or any part of the stock of any other corporation. The section is violated whether or not actual restraints or monopolies, or the substantial lessening of competition, have occurred or are intended. (U. S. 2)

A bit further the Court flatly states:

> We hold that any acquisition by one corporation of all or any part of the stock of another corporation, competitor or not, is within the reach of the section whenever the *reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce.* (U. S. 5)

And towards the end of the opinion, the Court reiterates:

> We repeat, that the test of a violation of No. 7 is whether at the time of suit there is a *reasonable probability* that the acquisition is likely to result in the condemned restraints. (U. S. 20)

The Court then used the following language in applying this test to the facts of the case at hand:

> The conclusion upon this record is inescapable that such likelihood was proved as to this acquisition. The fire that was kindled in 1917 continues to smolder. It burned briskly to forge the ties that bind the General Motors market to Du Pont, and if it has quieted down, it remains hot, and, from past performance, is likely at any time to blaze and make the fusion complete. (U. S. 20)

The Court held further that in Section 7 cases there is no need to prove intent to restrain or monopolize; that action can be instituted at any time the incipient danger becomes apparent, and that in determining relevant markets the doctrine of the *Cellophane* case is not applicable.

In a larger sense, the real significance of the Supreme Court's opinion is that the Court has made a reaffirmation of the vital role which the antitrust laws play in maintaining an economy based on the concept of competition and freedom of entry to markets.

The Du Pont-General Motors case is but one of the steps in a continuing anti trust process designed to keep the American system of competitive private enterprise strong.

Now the case is back in the District Court for formulation of relief. Assistant Attorney-General Victor R. Hansen, the head of the Antitrust Division, has approved and has had submitted to the District Court, the Government's position on this question.

BOOK REVIEWS

America's Advocate: Robert H. Jackson, by Eugene C. Gerhart. The Bobbs-Merrill Company, Inc. 545 pp. $7.50.

Reviewed by RICHARD L. RITMAN

The first sentence of the Preface to this volume explains its title: "Robert Houghwout Jackson was America's advocate at the first international criminal trial in history which held individual defendants personally responsible for making aggressive war."

In this sense the title is merely descriptive of Jackson's role in a single historical episode—climactic though it may have been because of the controversial nature of its purpose, the *dramatis personae* involved, and the international flavor of the whole proceedings. It is also true that Jackson himself appears to have considered his participation in the Nurnberg trials his outstanding achievement as an advocate and his legacy to international jurisprudence.

But the late Mr. Justice Jackson was also "America's advocate" in a more generic sense and has been described as "The ablest advocate to be drawn to Washington and the foremost of the Roosevelt lawyers." Chief Justice Hughes is reported to have said that Jackson was the ablest Solicitor General to come before the Court, and it was Brandeis who suggested to Frankfurter that Jackson ought to be Solicitor General for life!

Verbal accolades from such sources mut be earned, and it was in Jackson's role—first as General Counsel for the Bureau of Internal Revenue, later as special counsel for the Securities Exchange Commission (arguing and winning the first case arising out of the Public Utility Holding Company Act of 1935), Assistant Attorney General in charge of the Tax Division of the Department of Justice, Solicitor General, and finally Attorney General—that he demonstrated the forensic skill and personal integrity that inspired the encomiums.

President Roosevelt once told Harold Ickes that "the trouble with Bob is that he is too much of a gentleman." In the political arena, where Jackson only strayed on rare occasions and then to meet with personal disappointment, being too much of a gentleman probably kept him from becoming Governor of New York. However, several responsible critics who have commented on the controversy that raged between him and Justice Black were of the opinion that Jackson's role in this context was somewhat less than that of a "gentleman." The author of this volume, though, does not appear to share that view, and his treatment of the controversy is so

obviously biased in Jackson's favor that one is irresistibly drawn to Black's corner.

Jackson, with affectionate nostalgia, liked to refer to himself as a "country lawyer"; he was critical of the large metropolitan law firms, with their legal specialists, once referring to them as "hard competitors for the general practitioners; their distinguishing products are the wide clientele and the narrow lawyer." Although all of his own experience in the private practice of law, prior to embarking on a career with the government, was as a "county-seat lawyer and the small town advocate," Jackson himself was very much of a specialist in the art of advocacy.

It was this special skill which undoubtedly prompted President Truman to ask Jackson to go to Europe as the chief prosecutor to try the Nazi war criminals, murderers of millions of Jews and despoilers of a whole continent. As the author notes, "Jackson's zest for advocacy was too compelling, the lure of a world trial too attractive, and the stakes too high to let this chance of several life times pass by." And Jackson did not let it pass by.

The Philadelphia Inquirer reported from Nurnberg:

> In one of the greatest opening statements ever delivered before any court, the United States Supreme Court Justice summarized the case against Hitler and Co. in such detail that even the defendants, sitting blinking before the bar of justice, shrank and seemed overwhelmed. Eloquent but unrestrained, bitter but convincing, Justice Jackson delivered scathing charges for four hours, punctuating his lengthy sixty-one page indictment with horror figures and facts which fell like trip-hammer blows upon the ears of the accused.

This book is a well-documented and competently written transcript of the life of a man who himself "knew the power of words to sway and govern men," and his trenchant pen was often employed to that end. For its treatment of the Nurnberg trials alone, it is eminently worth-while reading.

VERDICT!: The Adventures of the Young Lawyer in the Brown Suit, by Michael A. Musmanno. Doubleday & Company. 384 pp. $4.50.

Reviewed by BENJAMIN WEINTROUB

This is a zestful, lively book of the early courtroom experiences of a young lawyer, now a judge of the Pennsylvania Supreme Court, born in the United States and the son of Italian immigrants. Musmanno, shortly after admission to the Bar in Pennsylvania, obtained a job with a well established law firm in Philadelphia. His practice of law began in the early 20's of this century.

Unusually astute, quick witted, and passionately enamored of the legal profession, he was at once sensationally successful as a trial lawyer. He won over forty cases before losing one. *Verdict!* recites generously the substance of these cases and Musmanno's courtroom battles in behalf of his clients. The young attorney fought the good fight because he fervently believed that in each case he was battling in the cause of righteousness. He regarded each litigated matter as a personal challenge to make good. Upon witnessing his exploits in the courtroom, the reader readily shares Musmanno's satisfaction with the verdicts rendered. It seems right, for instance, that the bellboy, neatly trapped by prohibition agents into selling them liquor, should go free; that an already paid doctor's bill should not be paid again; and that a jury should find for the plaintiff, whose dog "met an untimely end beneath the wheels of an automobile." In his handling of criminal cases Musmanno demonstrated similar industry and originality in defending clients entrusted to his protection. In Musmanno's reporting, the reader is alongside this lawyer, listening to his arguments and cross-examinations and, finally, to a masterful summation before a jury.

Musmanno stubbornly attributed his early successes to his brown suit; wearing it in the courtroom, he decided, brought him his phenomenal luck before judges and juries. Initially, his only presentable garment, the brown suit was worn even when his wardrobe later consisted of more than a single suit. When he changed into a newer coat and pants he encountered ill luck; and, strangely, the loss of a few cases discouraged him to a point where he decided to abandon the practice of law.

He went to Europe, spent there over a year, and returned to Pennsylvania to a coal miners' county near Pittsburgh. Unknown there, though it was the world of his kinsmen, Musmanno opened his law office in the home of his father, a railroad laborer. He made good slowly, no longer perennially successful but commanding respect for his espousal of the causes of the poor and the under-privileged.

In 1927 he volunteered to be counsel in the sensational Sacco-Vanzetto case. He failed to save the shoemaker and the fish peddler from the gallows; but, following Musmanno through the tortuous ramifications of this legal process one is filled with a sense of pride in the legal profession that could count occasionally upon the services and idealism of a member of the Bar of Musmanno's principles and stature.

The young lawyer saw the chief actors of this drama, including the presiding judge, the governor of Massachusetts, important witnesses, and, of course, the defendants. In his pleas for delay and reconsideration of this case he was in touch, to no avail, with several Justices of the United States Supreme Court. He marshals evidence — in his telling uncontrovertible contentions—that Sacco and Vanzetti were innocent of the crime they were charged with;

and it was his finding that they were unjustly executed. In the weeks preceding this trial, Musmanno, unable to afford accommodations in a hotel, slept at the end of a tiring day on the floor of his office.

Later he championed the cause of the coal miners, captives in the clutches of coal-mine owners, politicians, and the Coal and Iron police. The chapter dealing with that phase of the author's reminiscences is an historic part of the gory story of American labor. One can now better understand the inevitable emergence of the personality of John L. Lewis as the tribune of the brutally exploited workers, the famous leader and organizer of the coal miners.

Reading *Verdict!* is a most satisfying experience. It is a boon to treasure for the lawyer and the layman alike—in fact for all who value integrity and honesty, and who seek positive evidence that would make them proud of Americans in action for the welfare of this land.

. . . A law is something which must have a moral basis, so that there is an inner compelling force for every citizen to obey. . . .

Chaim Weizmann,
Trial and Error

JOBS FOR LAWYERS

The Decalogue Society of Lawyers Placement Committee urges your help in finding employment for capable young lawyers recently admitted to the Illinois Bar. The services of experienced lawyers are also available. If and when in need of professional help please address our Society at 180 W. Washington Street, ANdover 3-6493, or call or write Michael Levin, chairman, The Decalogue Placement Committee, 30 N. LaSalle Street, ANdover 3-3186.

JOHN M. WEINER

Member of our Board of Managers John M Weiner addressed our Society on March 28th, in the Covenant Club, on "Immigration and Deportation." Weiner's address, it is expected, will appear in an early issue of The Decalogue Journal.

The meeting was scheduled by The Decalogue Legal Education Committee, Albert I. Zemel, chairman.

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SOCIETY CONDEMNS JENNER-BUTLER BILL

A resolution that the following report be adopted was passed by the Decalogue Board of Managers on May 23. Copies will be sent to all United States senators and the entire Illinois Congressional delegation.

Senate bill 2646 entitled "A Bill to limit the appellate jurisdiction of the Supreme Court in certain cases and for other purposes," as originally introduced by Senator Jenner of Indiana would have divested the Supreme Court of power to review acts of Congressional committees, aspects of the Federal Loyalty Security Program, as well as state regulation of subversive activities and admissions to law practice.

Admittedly the bill was directed at certain Supreme Court decisions with which the author of the bill disagreed. Subsequently, Senate Bill 2646 was amended by Senator John M. Butler of Maryland and the bill now provides as follows:

1) The Supreme Court cannot review the validity of a ruling of a state agency denying a person admission to practice law in that state;
2) A congressional committee is now the final arbiter of the pertinency of its questions;
3) In the area of "subversion and sedition" the doctrine of Federal preemption is eliminated, except to the extent specifically provided for by Congress;
4) The distinction drawn in the YATES case between advocacy and teaching the overthrow of the Government as an abstract doctrine, and incitement directed at illegal action is eliminated, and all advocacy is unlawful without regard to its probable consequences.

It must be recognized that this bill is a threat to the independence of the judiciary and to our free institutions. It is significant that the Jenner-Butler bill has already been opposed by an overwhelming majority of the American Bar. Senator Thomas C. Hennings of Missouri declared:

> (this) is an unvarnished attempt to intimidate the nine Supreme Court Justices. . . . It represents one of the most irresponsible pieces of serious legislation reported by a committee to the Senate since I have been a member. For Congress to limit the Court as proposed, would establish a precedent which could be carried to a point where Congress could legislate the Court out of existence.

The Bill of Rights is under direct attack. In order to nullify the WATKINS decision, all restraint is removed from Congressional committees as to the requirement that questions be pertinent; thus a committee is the sole judge of the limits of its legislative authority. Certainly, due process would seem to require nothing less than that the subject matter of the inquiry should be made known to the witness, so that he can judge the relevancy of the questions put to him; anything else would remove the shield which protects the citizen from investigations conducted "to expose the private affairs of individuals without justification in terms of the functions of Congress."

> The provision of the Jenner-Butler bill declaring mere advocacy of abstract doctrine directed at the overthrow of the Government unlawful without regard to its probable consequences, intrudes into a highly sensitive area—the first Amendment mandate of freedom of speech. A heavy burden has been always upon those who would limit freedom of speech to justify the curtailment on the grounds of imminent danger to the community or the nation. This legislation would remove that burden and penalize speech merely because it was unpopular and would devitalize the first Amendment and encourage a stifling orthodoxy and conformity which could only lead "to the unanimity of the graveyard." Another section of the bill permits the states to have the final decision as to which persons may practice law within their respective jurisdiction. Thus a state could provide such political, racial or religious tests as might reflect local prejudices. The obvious mischief of this section needs no further elaboration. We need not be reminded that the Bill of Rights is the foundation upon which our free society rests. S. 2646 would endanger the basic permanency of that foundation.